

**REMARKS**

Claims 9-21 are pending in this application.

**I. CONSIDERATION OF INFORMATION DISCLOSURE STATEMENTS**

As mentioned in Applicants' previous response, the Patent Office has failed to consider or even acknowledge the three (3) Information Disclosure Statements previously filed by Applicants. The Examiner is requested to consider the information cited in the IDS's and to return initialed PTO-1449's from those IDS's with the next Patent Office Communication.

**II. ALL PENDING CLAIMS ARE PATENTABLE**

The Office Action rejects claims 9-21 under 35 U.S.C. §102(b) over U.S. Patent No. 5,277,269 to Ichimura et al. (hereinafter "Ichimura"). This rejection is respectfully traversed.

Independent claims 9 and 10 recite combinations of features including a selection member that selects one of a first mode and a second mode. Applicants respectfully submit that Ichimura does not disclose each and every feature of claims 9 and 10, including the claimed selection member.

Ichimura, which corresponds to Japanese Reg. No. 2634330 described in the Background section of Applicants' application, is directed to an engine revolution speed control device that comprises a hydraulic pump, a hydraulic motor, a means for speed reduction decision and a means for revolution speed control (Abstract). Ichimura teaches, at column 9, line 20 - column 15, line 68, setting a revolution speed  $N_o$  according to an operation amount of a fuel lever 23 and a revolution speed  $N_t$  or  $N_d$  according to an extent that a travel pedal 6a is operated. Ichimura selects, as a target revolution speed  $N_{roa}$ , a maximum value between the rotation speed  $N_o$  and the rotation speed  $N_t$  or  $N_d$ . Ichimura teaches a system that has only a single mode in which a selection of a maximum value is carried out.

The Office Action asserts that a working mode and a traveling mode taught in Ichimura correspond to the claimed first and second modes. However, the working mode and traveling mode select either revolution speed characteristics L1 for traveling or revolution speed characteristics L2 for working. Both characteristics L1 and L2 are set according to an operation amount of a travel pedal, and a comparison with the revolution speed  $N_o$  takes place when L1 or L2 is selected. In other words, Ichimura always compares the revolution speed  $N_o$  set by the fuel lever 23 with the revolution speed  $N_t$  or  $N_d$  set by the travel pedal 6a so that the rotation speed  $N_t$  or  $N_d$  according to the operation of the travel pedal 6a may be selected.

Claim 9 recites that a first mode and a second mode are provided and one of the first mode and second mode is selected. With regard to the first mode, either a first set rotation speed is set according to an operation of a first operating member or a second set rotation speed is set according to an operation of a second operating member. The larger rotation is selected, and the prime mover rotation speed is controlled to mesh with the selected maximum value.

In the first mode, the prime mover rotation speed can be controlled not only according to the operation of the second operating member, but also according to the operation of the first operating member which is configured to operate a control valve. The prime mover rotation speed does not become lower than the second set rotation speed set by the second operating member regardless of whether the first set rotation speed or the second set rotation speed is selected. Taking the second set rotation speed as the lower limit, the prime mover rotation speed can be controlled according to the operation amount of the first operating member. When the first set rotation speed is larger than the second set rotation speed, and the first set rotation speed is selected, the prime mover rotation speed is controlled according to the operation of the first operating member so as to control a flow of the pressure oil to be discharged from the hydraulic pump. A flow of the discharged pressure oil to the actuator is

then controlled by the control valve which is operated by the first operating member. That is, both a flow of the pressure oil is discharged from the pump and a flow of the pressure oil supplied to the actuator are controlled by the first operating member. This means that a flow of the pressure oil can be controlled over the whole range from the minimum flow to the maximum flow.

If, for instance, the second set rotation speed is zero and the first operating member is released, the prime mover rotation speed is set to an idle speed.

If the second set rotation speed is larger than the first rotation speed, the prime mover rotation speed is controlled by the second operating member so that the prime mover operates at the second set rotation speed. This means that the flow of the pressure oil discharged from the hydraulic pump is constant.

In the second mode, the prime mover rotation speed is controlled only by the second operating member. The second set rotation speed is set according to the operation of the second operating member and the prime mover rotation speed is controlled to the second set rotation speed. A flow of the pressure oil discharged from the hydraulic pump is thus constant, and a flow of the pressure oil supplied to the actuator is controlled through the control valve which is operated by the first operating member, thereby taking the flow of the discharged pressure oil to the upper limit.

With regard to claim 10, in the first mode, the prime mover rotation speed is controlled to match with the first set rotation speed. That is, both the prime mover and the control valve are controlled by the first operating member. Therefore, a flow of the pressure oil can be controlled over the whole range from the minimum flow to the maximum flow according to the operation of the first operating member. When the first operating member is released, the prime mover rotation speed is set to an idle speed. This is suitable when the construction machine stops traveling.

In view of the foregoing, Applicants respectfully submit that Ichimura does not disclose the claimed first and second modes because Ichimura always compares the revolution speed  $N_o$  set by the fuel lever 23 with the rotation speed  $N_i$  or  $N_d$  regardless of whether Ichimura is in the working or traveling modes. Further, Ichimura does not teach that a prime mover rotation speed is controlled to match with the first set rotation speed, as recited in claims 9 and 10.

For at least the foregoing reasons, Applicants respectfully submit that Ichimura does not teach the combinations of features recited in claims 9 and 10. Further, dependent claims 11-21 also are not anticipated by Ichimura for at least the dependence of these claims on independent claims 9 and 10, as well as for the additional patentable subject matter that each of these claims recite.

Accordingly, reconsideration and withdrawal of the rejection of claims 9-21 under 35 U.S.C. §102(b) over Ichimura are respectfully requested.

### **III. CONCLUSION**

In view of the foregoing, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 9-21 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number set forth below.

Respectfully submitted,



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